

**Document 1245 and 1248** are similar in that each contains the same e-mails.

Document 1248 contains one additional e-mail in incorporating the e-mails contained in Document 1245. These documents consist of an e-mail to legal counsel requesting legal advice or opinion on a legal matter. The reply e-mail of counsel specifically responds to the original inquiry. These documents have been shown to be subject to the attorney client privilege. It is recommended that they need not be produced.

**Document 1246** is an e-mail to which is attached a proposed agreement. The e-mail specifically asks legal counsel for a legal opinion regarding the attached draft agreement. It has been shown to be subject to the attorney client privilege. It is recommended that it need not be produced.

**Document 1247** is an exchange of e-mails in which legal counsel is asked for opinion or advice regarding a legal matter. Although counsel's response is not part of this document, the e-mails themselves make reference to certain factual matters upon which legal advice is sought. This document has been shown to be subject to the attorney client privilege. It is recommended that it need not be produced.

**Document 1258** consists of six e-mail messages. Although an attached draft document is referred to, the draft is not part of Document 1258. Two sentences, one in each of two e-mails make reference to a discussion with legal counsel about a legal

matter – the e-mail dated August 20 at 10:10 AM and the penultimate paragraph of an e-mail dated 8/20 at 9:35 AM beginning with the name “Baumann”. The remainder of the document discusses business matters and has not been shown to be privileged from disclosure under the attorney client privilege. It is recommended that this document be produced subject to the two redactions

**Document 1259** is similar to Document 1258. It too refers to attachments not part of the document and contains two short e-mails not found in Document 1258 and omits two e-mails contained in Document 1258. Except for the penultimate paragraph of the e-mail dated 8/20 at 9:36 AM, the document has not been shown to be protected from disclosure by the attorney-client privilege. The discussions are of business matters. It is recommended that the document be produced subject to the redaction of the paragraph of the 8/20 e-mail which starts with the name “Baumann”.

**Document 1260** is similar to Document 1258 except that it excludes two short e-mails found in Document 1258 but includes a draft of one of the attachments made reference to in the e-mails contained in this document as well as Document 1258. The draft attachment is an agreement which was sent to legal counsel for legal comment. Although this document does not disclose the comment, if any, counsel may have made with respect to the attached draft agreement, it is a legal document sent to counsel for legal advice or opinion and, hence, is protected from disclosure by the attorney-client

privilege. However, one of the e-mails does make reference to counsel's comment with reference to the second attachment which is not part of this document. That comment is the same one referred to in the discussion of Document 1258 and found in the penultimate paragraph of the e-mail dated 8/20 at 9:35 AM. Another e-mail dated August 20 at 7:11 AM also discusses legal counsel's opinion on a legal matter.

It is recommended that this document be produced subject to the redaction of the attached draft agreement, the redaction of the penultimate paragraph of the 8/20 e-mail which begins with the name "Baumann" and the redaction of the August 20 at 7:11 AM e-mail.

**Documents 1261 and Document 1262** are similar to Document 1260. Document 1261 contains two e-mails which serve as covering letters for an attached draft agreement, the same agreement attached to Document 1260. Document 1262 contains only one of the e-mails. The e-mails contain nothing protected by the attorney-client privilege. Therefore, it is recommended that they be produced. However, the draft agreement attached to both documents is the same one referred in the discussion of Document 1260. That draft agreement was referred to counsel for legal comment. It is recommended that the e-mails be produced subject to the redaction of the attached draft agreement.

**Documents 1263, 1264 and 1265** are similar and consist of an e-mail exchange between KPMG members regarding information received from legal counsel. No legal advice or opinion was given. Legal counsel's transmission consisted solely of factual information obtained from a source other than a client. The communication has not been shown to be subject to the attorney client privilege. It is recommended that the documents be produced.

**Documents Claimed to Be Subject To The 26 U.S.C. § 7525 Confidentiality Privilege**

The Special Master has examined the documents for which the § 7525 confidentiality privilege is claimed and, under the applicable law, makes the following findings and recommendations.

**Document 11    missing**

**Document 46.** This document is a memorandum from a KPMG member memorializing a conversation with a client discussing the effect of proposed tax legislation. This document has been shown to be subject to the statutory privilege against

disclosure since it provides tax advice to a taxpayer client. It is recommended that the document need not be produced.

**Document 60A** is similar to Documents 22 and 45. Judge Hogan has ruled that these documents have not been shown to have been protected from disclosure by § 7525 because they were prepared in conjunction with the preparation of a tax return. The respondent has not shown that Document 60A should be treated any differently. It is recommended that Document 60A shall be produced

**Documents 76, 82, 92, 125, 146, 150, 160, 198, 234, 302, 388, 417, 440, 441, 445, 499, 530, 631, 633, 652, 655, 686, 692, 693, 694, 695, 698, 699, 700, 703, 705, 712, 722, 730, 743, 789, 816, 818, 845, 873, 889, 931, 947, 952, 957, 962, 1056, 1072, 1088, 1088A and 1119.** These similar, if not identical documents, are memorandum from a KPMG member to another KPMG member or the file memorializing a conversation with tax payer clients and in some instances, their attorney, in which KPMG furnished tax advice to investor/clients about a tax matter. (Doc 76, 82, 150, 160, 440, 652, 722, and 743, attorney or attorney and client), (Doc. 46, 92, 125, 146, 198, 234, 302, 388, 417, 441, 445, 499, 530, 631, 633, 655, 686, 692, 693, 694, 695, 698, 699, 700, 703, 705, 712, 730, 789, 816, 818, 845, 873, 889, 931, 947, 952, 957, 962, 1056, 1072, 1088, 1088A and 1119, taxpayer client). These documents have been shown to be fall within the scope of §

7525 protecting as confidential tax advice furnished a tax payer by a federally authorized tax practitioner. It is recommended that they need not be produced.

**Document 164** is a multi-paged document from KPMG to a client providing tax advice and opinion on an investment strategy. However, only a portion of this document has been shown to contain tax advice and opinion ( FOP 007565 through FOP 007570) so as to subject it to the statutory privilege. The remainder of the document consists of fax cover sheets and investment transaction summaries ( FOP 007571 through FOP 007577 and FOP 007583 through FOP 007590), fax instructions regarding bank transfers ( FOP 007578 through FOP 007581) and an e-mail regarding the respective interest of Evergreen partners in an OPIS transaction (FOP 007582) which have not been shown to be privileged under § 7525. Therefore, it is recommended that only pages FOP 007565 through FOP 007570 which contain tax advice and opinion need not be produced, the remainder of the document has not been shown to fall within the statutory privilege. It is recommended that Pages FOP 007571 through FOP 007590 be produced.

**Document 171.** This document is an intra-KPMG e-mail which discusses changes needed to a client opinion letter based on a KPMG template (Document 1005). The underlying opinion letter for this client is Document 1005. In my Initial Report and Recommendation this underlying opinion letter was found to be identical to Documents 45 and 159 except for names, dates, amounts invested and the name of the investment

advisor. Judge Hogan ruled that Documents 45 and 159 have not been shown to be subject to the § 7525 privilege because it was prepared to be used in conjunction with the preparation of a tax return. The changes to that opinion letter are in no better position than the template letter itself. The changes were undertaken in order to further the documentation prepared for use with or in support of a tax return. KPMG has not shown that this document provided tax advice to a taxpayer so as to subject it to the § 7525 privilege. It is recommended that Document 171 be produced.

**Document 218.** This document is similar to Document 22 in most respects. Judge Hogan found that Document 22 was not shown to fall within the protection of § 7525. The same holds true for Document 218. It is recommended that this document be produced.

**Document 316.** This document is a memorandum from the NY office of KPMG to personnel in other offices with instructions regarding the deletion of certain representations in a client's opinion letter. Nothing in this document appears to fall within the protection of the § 7525 privilege. It merely contains the factual representations of a third party. It contains no factual information from a tax client so as to render the document privileged under § 7525. It is recommended that this document be produced.

**Document 337** is claimed to be outside the scope of the summons. I believe it does fall within the summons request. However, the document appears to fall within the § 7525 privilege since it is a response by a tax preparer to a taxpayer's inquiry for tax advice regarding the treatment of certain funds. It is recommended that this document need not be produced.

**Document 373 (1157A), 374 (1159A) and 473 (1160A)** are related and therefore treated together. These documents appear to fall within the summons request. Document 373 also referred to as Document 1157A is described as a letter from KPMG to a client. They are claimed to be privileged since they allegedly contain tax advice. An examination of the documents supports their exemption under § 7525. They do provide the client with tax information as well as opinions and conclusions. It is recommended that these documents need not be produced.

**Document 374** also designated as Document 1159A is undated and contains no identifying information. The privilege log states that it came from the files of a named client. It does provide a detailed discussion as well as conclusions with respect to a portion of the Internal Revenue Code and when read in conjunction with Document 473 also referred to as Document 1160A it appears that it came from the same file as Document 473. These documents appear to fall within the exemption of § 7525 since



they provide tax advice or opinion with respect to a tax issue following inquiry by a tax payer client. It is recommended that they need not be produced.

**Document 473** also referred to as Document 1160A is a letter from a KPMG partner to a tax client in response to a request for tax advice. The letter does contain detailed tax advice and falls within the exemption of § 7527. It is recommended that these documents need not be produced.

**Document 375.** This document is described in the log as an e-mail from one KPMG member to another discussing tax advice for a client. The document contains no tax advice to a client taxpayer but rather instructional information from one KPMG office to another office. There is no showing that this document is subject to protection under § 7525. It is recommended that this document be produced.

**Document 377, 379 and 384.** These documents are described in the log as confidential letters to a client concerning tax advice. Examination discloses that they are cover letters to clients transmitting invoices from a law firm with advice on how to treat the bill on the tax return. The letters contain information regarding the preparation of a tax return. The Respondent has not shown that they contain information rendering them privileged under § 7525. It is recommended that they be produced.

**Document 392.** This document is an e-mail exchange between KPMG members concerning a minor change to an opinion letter (Document 45) previously determined not to have been shown to be privileged. This document contains no tax advice so as to render it privileged under §7525. It is recommended that this document be produced.

**Document 393** is an e-mail exchange between KPMG members. The e-mail merely provides some factual information and requests answers to some policy issues. It contains no tax advice and has not been shown to be subject to the § 7525 privilege. It is recommended that the document be produced.

**Document 492.** This document is alleged to contain tax planning advice. A review discloses that it is merely a covering letter for a billing invoice. The so called tax advice relates to the preparation of a tax return. It is recommended that it be produced.

**Documents 542 and 543** relate to editorial changes requested by a client to a KPMG opinion letter (Document 544). The Special Master has previously determined that Document 544 is very similar to Documents 45 and 159 which were claimed to be privileged under § 7525.( Initial Report and Recommendation p. 5). Judge Hogan has ruled that Documents 45 and 159 have not been shown to be subject to the §7525 privilege ( Memorandum Opinion, Dec. 20, 2002, p.15). Since Documents 542 and 543

merely relate to editorial changes to Document 544 they stand in no better position than Document 544 except for the second paragraph of Document 543 which discusses language contained in an attorney opinion letter (Document 442) found by Judge Hogan to be subject to the attorney-client privilege ( Memorandum Opinion, Dec. 20, 2002, p.16). It is recommended that Document 542 be produced and that Document 543 be produced subject to the redaction of the second paragraph in the text of that email beginning with the word "Also" and ending with a telephone number.

**Document 546** is a cover letter enclosing a revision of two pages of a document almost identical to Document 45 found by Judge Hogan not to be protected by § 7525 from disclosure ( Memorandum Opinion, Dec. 20, 2002, p 15).. Since a document similar to Document 546 has been found not to be subject to the § 7525 privilege, revisions to Document 546 are likewise not privileged under § 7525. It is recommended that this document be produced.

**Document 547** is a letter from KPMG to a client discussing tax advice and planning. It appears to fall within the privilege of non-disclosure accorded by § 7525. Therefore, it is recommended that this document need not be produced.

**Documents 549 and 550** are letters to a tax client offering tax information and advice on a tax matter by a tax advisor. Accordingly, they are protected from disclosure pursuant to § 7525. It is recommended that they need not be produced.

**Documents 551 and 556** are memoranda between KPMG personnel concerning minimal tax advice provided a client. Therefore, they arguably fall within the protection of § 7525. It is recommended that they need not be produced.

**Document 555** is a letter from a tax client to a tax preparer regarding a tax matter. It falls within the protection of § 7525. It is recommended that it need not be produced.

**Document 558** is a hand written memo to the file memorializing a conversation with a tax client regarding a tax matter. It is protected from disclosure under § 7525. It is recommended that it need not be produced.

**Documents 568, 569 and 571** are duplicate letters from a tax advisor to a tax payer regarding a tax matter. They discuss certain financial transactions and provide tax advice. They are protected from disclosure under § 7525. It is recommended that they need not be produced.

**Document 573** are hand written notes of a tax advisor regarding a conversation with a tax payer client about a tax matter. This document has been shown to be privileged under § 7525. It is recommended that it need not be produced.

**Documents 574 and 578** are duplicate copies of a memo memorializing a conversation between a tax advisor and a tax payer client regarding a tax matter. They are similar to numerous other memoranda memorializing conversations with tax payer clients which have been found to be subject to protection from disclosure under § 7525. It is recommended that documents 574 and 578 need not be produced.

**Document 576** is a memo said to have been found in the files of a tax payer client. It contains tax advice from a tax advisor regarding a tax matter. It has been shown to fall within the § 7525 privilege. It is recommended that it need not be produced.

**Document 577** is a memo of a conversation by KPMG personnel with a lawyer regarding a legal and tax issue in which the lawyer furnished advice regarding their mutual client. Since it contains tax advice about a tax matter it has been shown to fall within the scope of the privilege accorded under §7525. It is recommended that it need not be produced.

**Documents 584 and 585** are duplicate copies of a letter similar to Documents 568 and 569 and **Documents 586 and 587** are duplicate copies of Documents 584 and 585. It is recommended that they need not be produced for the reason stated with respect to Documents 568 and 569.

**Document 597** is a letter to a tax payer from a tax advisor providing tax advice relating to a financial transaction. It has been shown to be protected under § 7525. It is recommended that it need not be produced.

**Document 632** is a memorandum of a discussion of a tax matter by a tax advisor with a tax payer client. The memo is signed by the tax payer. This document falls within the scope of § 7525. It is recommended that it need not be produced.

**Document 647** is an intra-office email between KPMG. It contains no tax advice and therefore is outside the scope of § 7525. It is recommended that this document be produced.

**Document 670** is a letter from a tax advisor to a tax payer client responding to a question raised by the tax payer about a tax matter. The tax advisor provides the tax payer with his opinion on a tax matter. The document falls within the scope of § 7525. It is recommended that this document need not be produced.

**Documents 679, 680, 681, 687 and 702** are duplicate or similar fax memos and invoices. They provide instructions with respect to the payment of the invoice but no substantive tax advice. This is information for help in the preparation of a tax return. These documents have not been shown to be within the scope of the § 7525 privilege. It is recommended that they be produced.

**Document 733 and 734.** This duplicate one page memo (the memo itself indicates that it is 1 of 2 pages) from one KPMG member to another is claimed to be privileged under § 7525. However, the memo provides no tax advice to a taxpayer client. It is merely a cover sheet accompanying a "schedule" to be submitted to the Franchise Tax Board to support a claimed deduction on a tax return. It has not been shown to fall within the scope of the protection accorded by § 7525. It is recommended that this document be produced.

**Document 779A** contains a fax cover sheet from KPMG to a lawyer for a mutual client. The document also contains a portion of Document 45. Judge Hogan has determined that document 45 has not been shown to be protected by § 7525 from disclosure (Memorandum Opinion, Dec. 20, 2002, p.15). The fax cover sheet has not been shown to contain any substantive tax advice so as to bring it within the § 7525 privilege. It is recommended that this document be produced.

**Document 848** is an intra-office memo discussing tax advice provided a tax payer client on a tax matter by a tax advisor. It has been shown to fall within the claimed § 7525 privilege. It is recommended that this document need not be produced.

**Documents 849, 850, 851, 852, 853, 854, 855, 856, and 857** are duplicate copies of an exchange of emails between an investment advisor for a KPMG tax payer client and a tax advisor providing tax advice regarding a tax matter. This exchange of emails has been shown to fall within the scope of § 7525. It is recommended that these documents need not be produced.

**Document 872** is similar to Document 44 in form and substance. Judge Hogan ruled that Document 44 has not been shown to fall within the scope of the § 7525 privilege (Memorandum Opinion, Dec. 20, 2002, pp.13 - 15). This document should be treated similarly. It is recommended that it be produced.

**Document 877** is a letter from a KPMG partner to a tax payer client providing tax advice on a tax matter . It has been shown to fall within the scope of the § 7525 privilege. It is recommended that this document need not be produced.

**Document 878** is a draft of the first and last pages of an opinion letter to a tax client. Judge Hogan found that a similar complete letter (Document 22) was not shown to



fall within the privilege contained in § 7525. This draft falls in the same category. It is recommended that the document be produced.

**Document 879** is a memorandum from a KPMG partner to a tax payer client providing tax advice on a tax matter. It has been shown to fall within the scope of the § 7525 privilege. It is recommended that this document need not be produced.

**Document 881 also referred to as Document B469** is similar to Documents 22 and 44. Both of these documents have been found by Judge Hogan to be outside the scope of § 7525 because they were "prepared in conjunction with the preparation of a tax return" (Memorandum Opinion, Dec. 20, 2002, pp. 13-15). Document 881, (B 469) should be treated similarly. It is recommended that this document be produced.

**Document 890.** This email exchange between KPMG personnel allegedly contains tax advice. In reality the document discusses the marketing of an investment product. Even the subject matter caption of the email states that the email relates to "Investment in 'Backend' Call Options". The e-mails have nothing to do with tax advice to a tax client about a tax matter. It is recommended that this document be produced.

**Document 891** is an email from a tax payer client to a KPMG member seeking tax advice on a tax matter. It has been shown to fall within the scope of the § 7525 privilege .It is recommended that this document need not be produced.

**Document 893** consists of an email and letter. Both communications are by and between KPMG personnel. They discuss a draft opinion relating to a transaction "using \_\_\_\_\_ as general partner" It is not clear from that this relates to tax advice to a tax payer client so as to bring it within the scope of § 7525. In the absence of such a showing it cannot be found that this document is protected from production under § 7525. It is recommended that this document be produced.

**Document 902** is an email from a taxpayer client to a tax advisor seeking an opinion on a tax matter. It has been shown to fall within the scope of § 7525. It is recommended that this document need not be produced.

**Documents 908, 909, 910 and 911.** Documents 908, 909, 910 and 911 are part of a series of e-mail exchanges between KPMG personnel about a business matter. They contain no tax advice to a taxpayer client. They involve the preparation of a marketing proposal. They have not been shown to fall within the protection of § 7525. It is recommended that these documents be produced.

**Document 916.** This one sentence e-mail from and to KPMG members provides no tax advice to a taxpayer client. It concerns a business matter and has not been shown to fall within the scope of the claimed § 7525 privilege. It is recommended that it be produced.

**Document 917** is an exchange of e-mails between KPMG members regarding a change in language in a document similar to Documents 22, 44 and 45. Judge Hogan has found that these documents have not been shown to be privileged under § 7525. If the underlying documents are not privileged, correspondence suggesting changes in those documents is not privileged. It is recommended that this document be produced.

**Documents 922, 924 and 925** are an exchange of e-mails regarding the editorial review of a document similar to Documents 22, 44 and 45. The § 7525 privilege has not been shown to be applicable to these documents for the reasons stated with respect to Document 917. Moreover, these documents contain no tax advice. It is recommended that these documents be produced.

**Documents 934, 935, 939 940 and 941.** The privilege log states that Documents 934, 935 and 939 are handwritten notes "memorializing a conversation with clients". These notes are claimed to be privileged under § 7525. These documents are of poor copy quality and for the most part are unreadable. Moreover, they are cryptic so as to

render them difficult to understand. However, when read, to the extent that they are readable, in conjunction with Document 940 and its duplicate 941 ( a letter from this same client to a KPMG tax advisor enclosing financial materials "as a follow-up to our discussions"), it appears that the handwritten notes memorialize the client's responses to a series of inquiries made by the tax advisor and disclosed by the taxpayer client. It appears, therefore, that all four of these documents have been shown to fall within the scope of § 7525 so as to render them privileged from disclosure since they concern tax advice by a tax advisor to a taxpayer client about a tax matter. It is recommended that these documents need not be produced.

**Documents 936, 938, 950, 951, 958 and 959.** According to the privilege log these duplicate documents are a memorandum of tax advice to a taxpayer client. From a review of the documents it appears that they are marketing memoranda rather than specific tax advice to a taxpayer client. They have not been shown to fall within the scope of § 7525 so as to render them privileged from disclosure. It is recommended that these documents be produced.

**Document 937.** The privilege log says that these handwritten notes memorialize a tax advice conversation with a taxpayer client regarding a tax matter and are privileged under § 7525. The memo discusses a review of 1996 and 1997 tax returns. It is difficult to determine if the memo was created in anticipation of the preparation of the taxpayer's

1998 tax return since it is dated October 14, 1998 or was created in order to provide tax advice for the remainder of the calendar year 1998. The respondent has provided no other information to explain this document. In and of itself, the document has not been shown to fall within the scope of § 7525. Accordingly, it is recommended that the document be produced.

**Document 955** is a letter from a tax advisor to a taxpayer client furnishing tax advice. It has been shown to fall within the scope of § 7525. It is recommended that this document need not be produced.

**Document 956.** These handwritten notes are similar to Documents 934, 935, 937 and 939. For the reasons stated with respect to those documents it is recommended that this document need not be produced since it appears to be fall within the § 7525 privilege.

**Document 1002.** This one sentence e-mail from and to KPMG members does not contain tax advice to a taxpayer but instead involves a marketing or business matter. It has not been shown to fall within the scope of § 7525. It is recommended that this document be produced.

**Document 1003.** This e-mail exchange discusses client specific changes to a template opinion letter. Judge Hogan found that the underlying opinion letters (Documents 22, 44, 45, 159) have not been shown to fall within the scope of § 7525. There has been no additional showing why a discussion of changes to an opinion letter found not to be within the § 7525 privilege should be treated any differently than the underlying document. Therefore, it is recommended that this exchange of e-mails be produced.

**Document 1004** is an e-mail cover sheet. It discloses no tax advice to a taxpayer client required by § 7525 so as to protect it from production. It is recommended that this document be produced.

**Document 1014** consists of a series of e-mails by and between KPMG personnel regarding proposed legislation. The document is alleged to be privileged by reason of § 7525. The document in substance discusses business related matters and related decisions rather than client specific tax advice to a taxpayer client. It has not been shown to fall within the scope of § 7525. It is recommended that this document be produced.

**Document 1015** is a series of e-mails by and between KPMG personnel about a KPMG opinion letter and how certain IRS actions may affect that letter. There is nothing in these e-mails that gives specific tax advice to a taxpayer client. This is a business

related discussion. There is no showing that these e-mails fall within the protection of § 7525. It is recommended that this document be produced.

**Documents 1016, 1017 and 1018** are a series of e-mails by and between KPMG personnel about a client business matter. It relates to Documents 896, 900 and 901. There is no showing that these documents are protected from production by § 7525. It is recommended that these documents be produced.

**Document 1034.** The privilege log states that this document is a draft letter claimed to be subject to § 7525 protection. The document is really a template not addressed to any specific taxpayer. Indeed the salutation refers to "investor" and not a named taxpayer. It is a business related document which does not provide tax advice to a taxpayer client. It is similar to the other form opinion letters which Judge Hogan found were not entitled to protection under § 7525. It is recommended that this document be produced.

**Document 1066.** The privilege log states that this document is a confidential fax communication from a client privileged under § 7525. The document submitted is page 2 of a fax transmission. It does not identify any party. Moreover, it appears to request a response to questions relating to the preparation of a tax return or tax schedule. There is

no showing that it seeks tax advice as distinguished from information to be used in the preparation of a tax return. It is recommended that this document be produced.

**Document 1069.** This series of e-mails together with an attachment are said to be a discussion of the application of a strategic analysis for a named client. Although the e-mails and attachment discuss a strategic marketing devise, there is no discussion of tax advice to any client, much less a named client. This appears to be a notification from one section of KPMG to another advising of a service that is available to help evaluate client investments and protect market share from slippage to competitors who offer a similar service. There has been no showing that this document falls within the scope of § 7525. It is recommended that this document be produced.

**Document 1073** is an e-mail from a KPMG member to other members regarding an inquiry from a lawyer who represents a KPMG taxpayer client about a tax matter. The question from the lawyer seeks tax advice for the benefit of their mutual client . It appears to fall within the claimed protection of § 7525. It is recommended that this document need not be produced.

**Documents 1089, 1090, 1091, 1096, 1097, 1105, 1108, 1110, 1111, 1112, 1116, and 1117** are duplicates of a memorandum memorializing a conversation between KPMG members and clients regarding the preparation of a tax return. The memo is



claimed to be privileged from production by reason of § 7525. The memo discusses various alternatives in the preparation of a client's tax return. Judge Hogan ruled in his Memorandum Opinion of December 20, 2002 that a document prepared in connection with or in support of a tax return is not subject to the confidentiality privilege accorded by § 7525 ( pp 12-13) These documents clearly and unmistakably discuss the various alternatives to be considered in the preparation of a tax return schedule. KPMG has not shown that these documents fall within the protection accorded by § 7525. Accordingly, it is recommended that these documents be produced.

**Document 1093 and 1109.** This letter is sought to be protected from production under § 7525. The privilege log states the letter discusses the retention of tax records. A review of this document confirms that it indeed does discuss this topic and that it is specific in its advice to a taxpayer client . The document has been shown to fall within the protection of § 7525. It is recommended that this document need not be produced.

**Documents 1095, 1098, 1099 and 1101.** These duplicate copies of e-mails between KPMG members discuss tax form filings. They are sought to be protected from production by virtue of § 7525. The discussion regarding Documents 1089, 1090 and 1091 is equally applicable here. The statutory privilege has not been shown to apply. It is recommended that these documents be produced.